

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 291

[Docket No. FR-4887-A-01; HUD-2006-0007]

RIN 2502-A114

Accelerated Claim and Asset Disposition (ACD) Program; Advance Notice of Proposed Rulemaking

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This notice solicits comments on HUD's Accelerated Claim and Asset Disposition (ACD) program before HUD proceeds to issue a proposed rule that will commence the rulemaking process that will result in codification of the requirements for the ACD program, thus making the ACD program a permanent part of HUD's single family mortgage insurance programs. Under the ACD program, HUD will pay claims upon assignment of certain defaulted mortgage loans ("assets") insured by the Federal Housing Administration (FHA). The purpose of the ACD program is to help FHA maximize the recovery on assets sold by HUD. HUD seeks comments on the ACD Demonstration program, including recommendations of cost-effective, efficient improvements and alternatives that should be made part of the permanent program.

DATES: *Comment Due Date:* August 4, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons also may submit comments electronically through the Federal eRulemaking Portal at: <http://www.regulations.gov>. Commenters should follow the instructions provided on that site to submit comments electronically. HUD strongly encourages commenters to submit comments electronically in order to make them immediately available to the public.

Facsimile (FAX) comments are not acceptable. In all cases, communications must refer to the docket number and title. All comments and communications submitted will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above

address. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY (text telephone) by calling the Federal Relay Service at 1(800) 877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Malone, Director, Asset Sales Office, Office of Finance and Budget, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3136, Washington, DC 20410-8000; telephone (202) 708-2625 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 29, 2002 (67 FR 66038), HUD published a notice in the **Federal Register** announcing the establishment of the Accelerated Claim and Asset Disposition (ACD) Demonstration program. The October 29, 2002, notice followed a February 5, 2002 (67 FR 5418), notice that announced HUD's intent to establish the ACD Demonstration program and solicited public comments on the proposal. The ACD process is authorized under section 601 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998), which amended section 204 of the National Housing Act (12 U.S.C. 1710) to increase recoveries, produce savings, and improve the overall efficiency of the disposition of HUD-acquired single family assets.

Under amended section 204(a)(1)(A) of the National Housing Act, the Secretary of HUD is authorized to pay claims upon assignment of certain defaulted FHA-insured mortgage loans. Before implementing the new ACD disposition process on a nationwide basis, HUD has conducted an ACD Demonstration program involving a group of defaulted mortgages. This has allowed HUD to assess the overall effectiveness of this disposition process. HUD believes that improvements can be made to the program to make it more effective. Consequently, before proceeding with the regulatory

codification of the ACD program, HUD is soliciting comments from all interested parties, especially those who participated or declined to participate in the Demonstration program, on possible improvements to the program.

II. This Advance Notice of Proposed Rulemaking

This notice solicits comments on HUD ACD Demonstration program before HUD issues a proposed rule to codify the requirements for the ACD program. When codified, the ACD program will become a permanent part of HUD's single family mortgage insurance programs. Also upon codification, the current regulations in 24 CFR part 203 governing the assignment of mortgages to HUD and related claim procedures will be amended to reflect the new requirements for assignments made pursuant to the ACD program. The proposed rule would also revise 24 CFR part 291, which governs the disposition of HUD-acquired single family property, to incorporate the policies and procedures for the sale of loans assigned to HUD under the ACD program. The ACD program regulations would provide for the ACD payment of claims. An objective of the ACD Program will be to maximize the return to the FHA insurance fund. One way to maximize returns to FHA is to minimize the time an asset is held.

Possible components of the ACD program would be as follows:

1. *Mandatory and voluntary components.* HUD is considering establishing two program components: (1) A mandatory component under which mortgagees that elect to file claims on certain defaulted mortgages (such as vacant homes) would be required to submit the mortgages for assignment and payment of a claim pursuant to the ACD program; and (2) a voluntary component under which eligible mortgagees would be permitted to submit other types of defaulted mortgages that meet specified eligibility criteria, pursuant to the ACD program, for assignment and payment of a claim.

2. *Disposition alternatives.* To date, sales awarded based on competitive bids under the ACD Demonstration program have been conducted using joint ventures as the vehicle for disposing of defaulted assets. The proposed rule would build upon the experience of the ACD Demonstration program by granting HUD the flexibility to choose from a variety of disposition alternatives, including the joint ventures. In addition to joint ventures, another possible disposition method would be whole loan or bulk sales

involving the disposal of a portfolio of assets to the highest bidder. Another possible option would be the packaging of loans into securities that are then sold to investors. Flexibility in the choice of disposition alternatives would increase HUD's ability to respond to changes in both the economy and the financial real estate market.

3. *Asset management alternatives.* The proposed rule would also describe the asset management ("servicing") requirements applicable to loans assigned under the ACD program. HUD is considering several asset management alternatives for inclusion in the proposed rule. For example, the current FHA servicer may be required to continue servicing the loan on a fee basis until notice by HUD to transfer the loan to the servicer's designee. Another alternative would be for HUD to transfer the servicing of the loan to a servicer who would be responsible for servicing, foreclosing, and selling the assets. Based on the public comments received on this notice, the proposed rule might provide for one or more asset management alternatives, including those outlined above.

III. Public Comments

HUD is requesting interested members of the public, particularly those who participated in the ACD Demonstration program, to submit comments on the ACD Program and, specifically, on the main program components identified in Section II of this notice and the following issues and questions. In proposing procedural or program

recommendations for disposition or asset management alternatives and claim payment, HUD asks commenters to address:

(1) Methods and/or criteria that would assist in identifying loans with high probability of foreclosure and conveyance;

(2) Asset eligibility criteria ("criteria") that should be considered for the proposed voluntary or mandatory components of the ACD program;

(3) Any procedural and staffing efficiencies that may be anticipated from implementation of such criteria;

(4) Selection of a control group of non-ACD loans for evaluation purposes;

(5) Measures that may assist in assessing the effectiveness of the disposition process; and

(6) Criteria that may be useful to HUD in determining the advantages and disadvantages of claim submission, including timing or reversal of termination of FHA insurance, acquisition, and disposition of loans and properties.

Public comments received in response to this notice will be used to develop a proposed rule that will commence the rulemaking process to codify the ACD program. HUD may also seek additional feedback from those entities that participated or have been impacted by the Demonstration program.

To assist the public, HUD wishes to share the preliminary evaluation that has been performed on the Demonstration program. This evaluation can be obtained by contacting the contact person listed in this notice, or

by visiting <http://www.hud.gov/offices/hsg/hsgroom.cfm>.

IV. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this advance notice of proposed rulemaking under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this notice is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Persons with hearing or speech challenges may access the above telephone number via TTY (text telephone) by calling the Federal Relay Service at 1-800-877-8339 (this is a toll free number).

Dated: May 23, 2006.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

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